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NO.

Supreme Court, U.S.  
FILED

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JOSEPH F. SPANIOLO, JR.  
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**In the  
Supreme Court of the United States**

OCTOBER TERM, 1986

**EUGENE SHEDRICK,**  
Petitioner/Appellant,

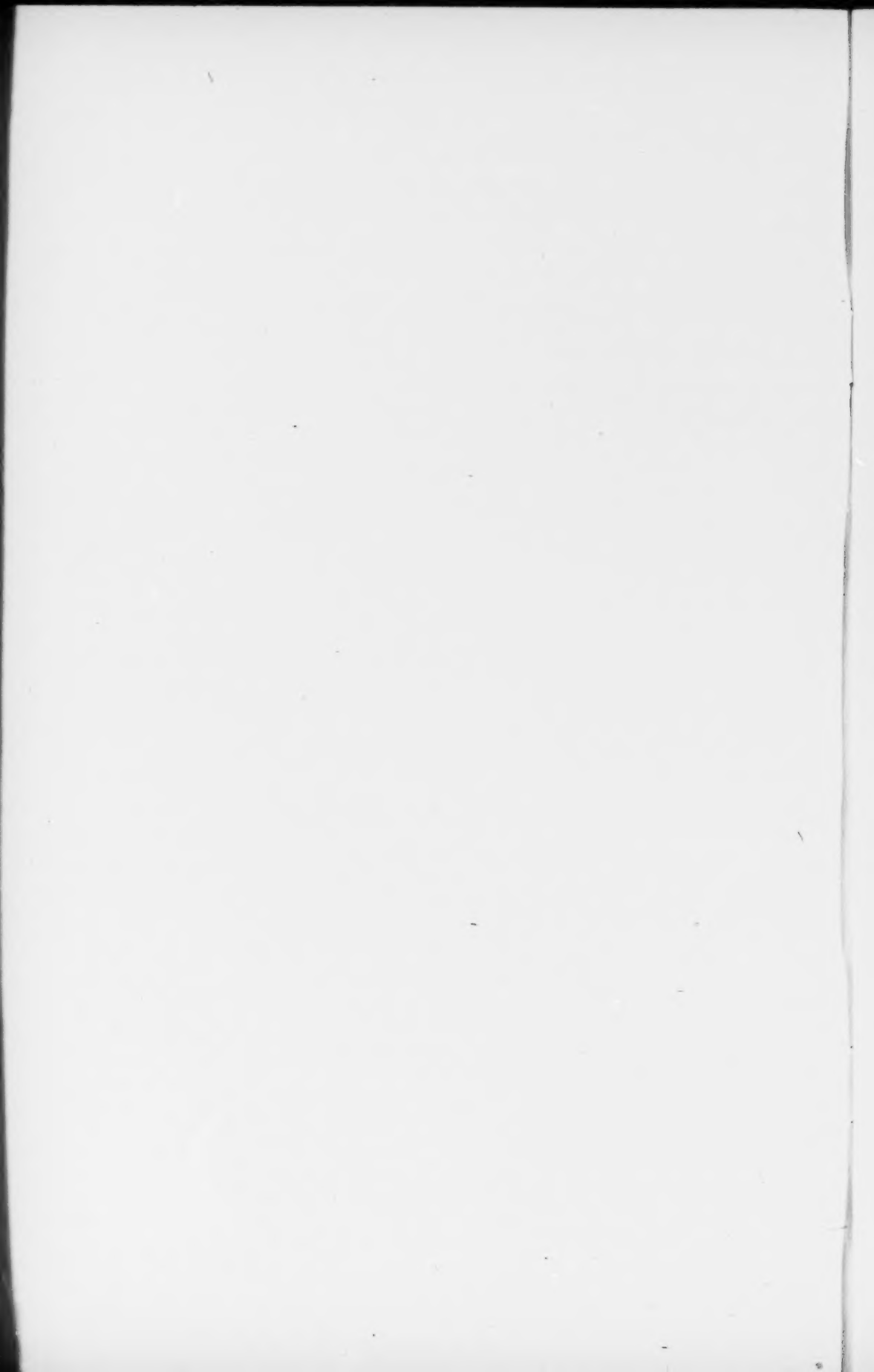
VS.

**DOROTHY D. DONNELLY, ET AL**  
Defendants/Respondents.

**PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**PETITION FOR WRIT OF CERTIORARI**

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ATTORNEY FOR PETITIONER**



## QUESTIONS PRESENTED FOR REVIEW

The question presented for review is whether a contract between a labor union and a school board may prohibit the right to counsel at a pretermination hearing of a teacher employee; and whether such a contractual provision is constitutionally invalid.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1986

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EUGENE SHEDRICK,  
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VS.

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PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

PETITION FOR WRIT OF CERTIORARI

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The instant application for a writ of certiorari or review is filed herein by Eugene Shedrick, petitioner, following the decision of the Honorable U.S. Court of Appeals, Fifth Circuit, rendered on January 27, 1987 affirming the prior judgment of the Honorable U.S. District Court for the Eastern District of Louisiana, Division "D".

No application for re-hearing was filed.

LOWER COURT OPINIONS

The case was tried to a judge on the question of whether or not the plaintiff-appellant was entitled to be

reinstated as a teacher employee because of failure to grant a timely tenure hearing and because of failure to permit him to have retained counsel at the pretermination hearing. Thereafter, the trial court held that the requirements of constitutional due process was satisfied and that the teacher did not have the right to have counsel represent him at the pretermination hearing because the union contract prohibited it. Copy of the decision of the trial court is annexed hereto as Exhibit "A". Copy of the decree of the Fifth Circuit is annexed hereto as Exhibit "B".

## **JURISDICTION**

Jurisdiction of this Honorable Court is invoked under Title 28 U.S. Code, Section 1254 and Section 1651, seeking to review the judgment of the Honorable United States Court of Appeals, Fifth Circuit, Handed down on January 27, 1987. This application for a writ of review is timely under the provisions of 28 U.S. Code, Section 2101(c).

## **PRINCIPLES AND STATUTES INVOLVED**

The principles involved herein are those enunciated by *Potashnick v. Port City Construction Co.*, 609 F.2d 1101 (5th Cir. 1980) and the Fifth Amendment of the United States Constitution.

## **STATEMENT OF THE CASE**

Eugene Shedrick, a duly certified teacher in the Jefferson Parish Public School System, with a record of service of some eighteen (18) years, was suspended without pay as of January 7, 1986, by the Superintendent of



Jefferson Parish Public Schools. At that time, the Superintendent claimed that he was entitled to act pursuant to Louisiana law (apparently L.S.A.-R.S. 17:417) and complainant thereafter filed a complaint to be reinstated in the U.S. District Court, Eastern District of Louisiana, for violation of the due process requirements.

Appellant contended that the Parish Superintendent improperly acted under R.S. 17:417 which permits the Parish Superintendent to withhold the salary of the teacher until the teacher properly performs his duties in this respect. Appellant further contended that since he had been suspended and ordered off the campus of the school where he was employed, it was impossible for him to perform the said duties.

Furthermore, appellant contended that in the pretermination hearing which occurred on or about January 22, 1986, that he was entitled to legal counsel, and that the posttermination hearing for the tenured teacher which occurred on February 27, 1986, May 22, 1986, and June 23, 1986, were not sufficiently prompt to be timely so as to comply with the requirements of due process.

Although appellant contends that he should not have been terminated without pay on January 7, 1986, that he does not fit R.S. 17:417, the statute under which he was terminated, and that he was subsequently denied on January 22, 1986, as well as the timeliness of the posttermination hearing, the serious question involved herein is whether appellant was entitled to counsel at the pretermination hearing on January 22, 1986.

If plaintiff was entitled to counsel at that hearing, then he should have been reinstated with pay from January

7, 1986, until June 23, 1986, when he was subsequently terminated as a result of the tenure hearing before the Jefferson Parish School Board.

In the union contract between Jefferson Federation of Teachers and the Jefferson Parish School Board, in pretermination hearings the right to counsel is denied. The contractual provision in question states:

"A. At any conference at which it is stated to a teacher that his dismissal (other than for reduction-in-force) or suspension is to be recommended, the teacher may request that the conference be reasonably adjourned (not to exceed three (3) hours unless an emergency otherwise dictates) to permit the teacher to secure the assistance of another teacher or a Federation representative (*other than legal counsel*). Such representative may advise the teacher, but shall not directly participate in the conference unless all participating parties agree that the representative may assume the role of spokesperson for the teacher or otherwise participate in such conference. The representative at the conclusion of the conference may make a brief (not to exceed five minutes, unless all participating parties otherwise agree) oral statement on the teacher's behalf. (Emphasis supplied). (R. p. 96).

"B. An administrative conference form shall remain in the teacher's file at the school, while a Special Conference form shall be placed in the teacher's personnel file in the Central Office. However, at times it may be necessary for the building principal to send administrative conference forms as supporting documentation to a special conference form. In these circumstances, the teacher will be so notified."

After Shedrick was terminated without pay he was prohibited from returning to the school campus; thus, he was unable to properly perform his duties as is required under L.S.A.-R.S. 17:417 where there is a termination without pay prior to a tenure hearing. L.S.A.-R.S. 17:417 provides:

"Teachers shall faithfully enforce the school courses of study and the regulations prescribed in pursuance of law; and if any teacher wilfully refuses or neglects to comply with such requirements, the parish superintendent shall withhold the salary of such teacher until the teacher properly performs his duties in such respect."

The U.S. Court of Appeals, Fifth Circuit, affirmed the judgment of the trial court on January 27, 1987. This application for a writ of certiorari or review now follows.

### ARGUMENT

The narrow point at issue is whether the union contract with the Jefferson Parish School Board which prohibits a teacher from having counsel at a pretermination hearing is constitutionally valid. The trial court and the court of appeals found that the pretermination hearing of January 22, 1986, without counsel was proper. The basis of the holding was that the union contract with Jefferson Federation of Teachers prohibited counsel's presence at the pretermination hearing. We respectfully submit that the union contract which prohibits the right to counsel at a pretermination hearing is constitutionally invalid.

In *Riggins*, citing *King v. University of Minnesota*,

774 F.2d 224, (8th Cir. 1985), quoting *Brouillette v. Board of Directors of Merged Area IX*, 519 F.2d 126, (8th Cir. 1975), cert. den. 106 S.Ct. 1491 (1986), the court states that there are four requirements of due process not including the opportunity to cross examine or confront witnesses, in the discharge of tenured professor from a state university, which are as follows:

- "1) clear and actual notice of the reasons for termination in sufficient detail to enable him or her to present evidence relating to them;
- 2) notice of both the names of those who have made allegations against the teacher and the specific nature and factual basis for the charges;
- 3) a reasonable time and opportunity to present testimony in his or her own defense; and
- 4) a hearing before an impartial board or tribunal."

See also *Cleveland Board of Education v. Loudermill*, 105 S.Ct. 1487 (1985).

As can be seen from the above quotation, there appears to be no requirement for counsel's presence for the hearing. We believe that the failure of the court to mention counsel is truly a situation where the right to counsel should not be prohibited. We don't believe that the court meant to imply that a union contract which prohibits the teacher from having legal counsel present at the pretermination hearing is constitutionally valid.

The contractual provision which clearly prevents counsel for the teacher from being present is what is claimed to be invalid herein. We would liken the loss of the

property right or salary of which Shedrick was relieved as a result of the pretermination hearing to be as significant as the loss of welfare benefits in the matter of *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011 (1970). In that case the Court stated:

“ ‘The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.’ *Powell v. Alabama*, 287 U.S. 45, 68-69, 53 S.Ct. 64, 77 L.Ed. 158 (1932). We do not say that counsel must be provided at the pre-termination hearing, but only that the recipient must be allowed to retain an attorney if he so desires. Counsel can help delineate the issues, present the factual contentions in an orderly manner, conduct cross-examination, and generally safeguard the interests of the recipient. We do not anticipate that this assistance will unduly prolong or otherwise encumber the hearing. Evidently HEW has reached the same conclusion. See 45 CFR §205.10, 34 Fed. Reg. 1144 (1969); 45 CFR §220.25, 34 Fed. Reg. 13595 (1969).”

The ruling herein appears to be diametrically opposed to the holding of the Fifth Circuit Court of Appeals in *Potashnick v. Port City Construction Co.*, 609 F.2d 1101 (5th Cir. 1980), cert. den. 449 U.S. 820, 101 S.Ct. 78, 66 L.Ed.2d (1980). In the *Potashnick* case, the Court of Appeals held that the right to retain counsel in civil litigation is implicit in the concept of Fifth Amendment Due Process. The Court stated:

“Although there do not appear to be any civil cases on this point, the Supreme Court has indicated in its criminal decisions that the right to retain counsel in civil litigation is implicit in the

concept of fifth amendment due process. See, e.g., *Powell v. Alabama*, 287 U.S. 45, 69, 53 S.Ct. 55, 77 L.Ed. 158 (1932); *Cooke v. United States*, 267 U.S. 517, 537, 45 S.Ct. 390, 69 L.Ed. 767 (1925). The right develops out of the principle that notice and hearing are preliminary steps essential to the passing of an enforceable judgment and that they econstitute basic elements of the constitutional requirement of due process of law. *Mulane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 70 S.Ct. 652, 94 L.Ed. 865 (1950); *Powell v. Alabama*, 287 U.S. 45, 68, 53 S.Ct. 55, 77 L.Ed. 158 (1932). Historically and in practice, the right to a hearing has always included the right to the aid of counsel when desired and provided by the party asserting the right. *Powell v. Alabama*, 287 U.S. 45, 68, 53 S.Ct. 55, 77 L.Ed. 158 (1932). 'If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.' 287 U.S. at 69, 53 S.Ct. at 64 (emphasis added); accord, *Roberts v. Anderson*, 66 F.2d 874 (10th Cir. 1933); *Rex Investigative and Patrol Agency, Inc. v. Collura*, 329 F.Supp. 696, 699 (E.D. N.Y. 1971)."

See also *Moseley v. St. Louis Southwestern Railway*, 634 F.2d 942 (5th Cir. 1981).

The narrow holding of the instant case conflicts with the narrow holding of *Potashnick* and *Moseley*, as to right to counsel in civil litigation. We respectfully submit the instant case would provide a sound basis to clarifying the right of a party to be represented by counsel in a civil proceeding.



We are aware of the fact that the Attorney General of the United States is now seeking to limit the right to counsel in criminal cases under the *Miranda* rule. We are also aware of the fact that the right to counsel in criminal cases is what is guaranteed under the constitution; and this is a civil case as distinguished from a criminal case. However, we also believe that a contractual provision by a union with a governing authority such as the school board which prohibits the right to counsel at a conference or pretermination hearing cannot withstand constitutional scrutiny.

The narrow point at issue herein is whether the plaintiff has the right to counsel in a civil context. We do not contend that he is guaranteed counsel by the governing authority; however, we do believe that he should have that right to retain counsel to represent him at the pretermination hearing. The contractual rule between the Jefferson Federation of Teachers and the Jefferson Parish School Board prohibits the plaintiff's right to retain counsel; and that is the rule which is challenged herein. We respectfully submit that such a contractual provision does not comport with due process under the Fifth Amendment, considering the expressions in the case law.

### REASONS FOR GRANTING THE WRIT

The question presented is whether the contract between union and an employer may eliminate an employee's right to counsel in a pretermination hearing. We respectfully submit that the right to counsel is so basic a right that a contractual elimination thereof should be struck down as invalid. We are aware of the fact that various statutes permit individual employees to be given notice of hearings and

the right to participate in them in person or by counsel. See for example 45 U.S.C. §153(j), pertaining to the Railway Adjustment Board. However, we know of no absolute requirement and prohibition of counsel in any hearing in any litigated decision, other than the instant case wherein we present that narrow issue for review.

### CONCLUSION

In conclusion, we respectfully submit that the contractual provision in the union contract between the Jefferson Federation of Teachers and the Jefferson Parish School Board should be stricken with nullity, and that in due course, petitioner should be reinstated with pay up until the time of the result of the formal tenure hearing as specified hereinabove.

Respectfully submitted,

GREENBERG & DALLAM  
848 Second Street  
P. O. Box 365  
Gretna, Louisiana 70054  
366-6491

BY: \_\_\_\_\_  
NATHAN GREENBERG  
ATTORNEY FOR PETITIONER



**CERTIFICATE**

I hereby certify that a copy of the above and foregoing Petition has been mailed to Jack Grant and Cornelius Regan, of Grant & Barrow, 238 Huey P. Long Avenue, Gretna, Louisiana 70053, Attorney for Defendants, by depositing the same in the U. S. Mail, postage prepaid.

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NATHAN GREENBERG



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**APPENDIX A**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

Filed

July 16, 1986

EUGENE SHEDRICK

\*

CIVIL ACTION

VERSUS

\*

NO. 86-72

DOROTHY D. DONNELLY

\*

SECTION "D" (1)

**OPNION AND ORDER**

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 2000(e)(2). With regard to the allegations pursuant to 42 U.S.C. § 2000(e)(2), Plaintiff's counsel concedes that this action is premature since he has not exhausted the administrative remedies as required and, accordingly, that portion of the complaint is dismissed, without prejudice, for lack of jurisdiction.

The allegations brought pursuant to § 1983 are concerned with Plaintiff's initial suspension without pay and ultimate dismissal by the Jefferson Parish School Board. A hearing was held on January 22, 1986 on Plaintiff's request for a Temporary Restraining Order and Preliminary Injunction and by Order of January 22, 1986, the Motion for Temporary Restraining Order and Preliminary Injunction were denied.

By stipulation of the parties, all remaining issues have been submitted to the court on the record which  
DATE OF ENTRY JULY 17, 1986

includes several documents including various affidavits. The parties have advised the court that they have no desire to depose any of the affiants but wish to submit the case for trial on the merits on the record as it now stands. Additionally, at oral argument Plaintiff conceded that in view of the tenure hearing which has now been completed, his complaint is now limited to two issues: (1) Did Plaintiff receive a constitutionally acceptable pretermination hearing before he was suspended without pay on January 8, 1986? (2) Was the tenure hearing which was completed on June 23, 1986, provided in a timely fashion or was it so delayed as to amount to a denial of constitutional rights?

Plaintiff conceded that the tenure hearing itself met constitutional muster except for the alleged unreasonable delays in completing the hearing. Accordingly, he seeks as damages the pay which he was denied from January 8, 1986 to June 23, 1986, the day when the tenure hearing was completed.

#### A. PRE-TERMINATION HEARING

The record reflects that on January 8, 1986, Plaintiff received a copy of a letter from Mrs. Dorothy D. Donnelly, Principal at Riverside High School to Mr. Sidney Montet, Director of Personnel Relations for the Jefferson Parish School System describing specific charges concerning the conduct of Plaintiff. In that letter, Mrs. Donnelly recommended that Plaintiff be terminated as a teacher in the Jefferson Parish School System. A January 7, 1986 addendum to that letter noted that because of additional information learned by Mrs. Donnelly and further investigation, she recommended that effective January 8, 1986, Plaintiff be suspended without pay. Mr. Montet concurred and on

January 7, 1986, Mr. Anthony P. Chimento, Superintendent of the Jefferson Parish School Board, reviewed the documentation and concurred with the recommendations of Dorothy Donnelly and Sidney Montet and, accordingly, Plaintiff was suspended without pay effective January 8, 1986.

On January 22, 1986, pursuant to a collective bargaining agreement, Mr. Montet held a conference concerning the matter which also attended by Plaintiff, Mrs. Donnelly, and the Union representative. Mr. Montet read each charge contained in the December 18, 1985 letter from Mrs. Donnelly and asked Mrs. Donnelly to substantiate each charge. After she did so, Plaintiff was asked to give his version of each charge and submit any additional documentation he desired. During the conference, Plaintiff and/or the Union representative responded to the statements of Mrs. Donnelly and, additionally, the Union representative and Plaintiff made concluding statements at the end of the conference. Plaintiff was advised that he could present any rebuttal he so desired and in fact he did so. He also questioned Mrs. Donnelly during the conference. The conference lasted almost three hours.

The essential requirements of due process, and all that respondents seek or the Court of Appeals required, are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement. See Friendly, "*Some Kind of Hearing*," 123 U.Pa.L.Rev. 1267, 1281 (1975). The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. See *Arnett v.*

*Kennedy*, 416 U.S., at 170-171, 94 S.Ct., at 1652-1653 (opinion of POWELL, J.); *id.*, at 195-196, 94 S.Ct., at 1664-1665 (opinion of WHITE, J.); *see also Goss v. Lopez*, 419 U.S., at 581, 95 S.Ct., at 740. To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee.

*See Cleveland Bd. of Educ. v. Loudermill*, 105 S.Ct. 1487, 1495, 1496 (1985).

The pre-termination procedure described above was constitutionally adequate. To the extent Plaintiff alleges he was denied some other procedural right provided by Louisiana law, the proper forum for redress of that allegation is in the state court.

## B. TIMELINESS OF TENURE HEARING

The record reflects that hearings were actually held on February 27, 1986, May 22, 1986, and January 23, 1986. Hearings were planned for other dates during the Spring of 1986 but had to be cancelled because of scheduling conflicts. At least one of the hearings was cancelled at the request of Mr. Shedrick's attorney. Apparently the hearings were thorough. Approximately twenty-five hours of testimony was taken. In *Cleveland Bd. of Educ. v. Loudermill*, *supra*, the court found:

A 9-month adjudication is not, of course, unconstitutionally lengthy *per se*. Yet Loudermill offers no indication that his wait was unreasonably prolonged other than the fact that it took nine months. The Chronology of the proceedings set out in the complaint, coupled with

the assertion that nine months is too long to wait, does not state a claim of a constitutional deprivation.

105 S.Ct. at 1496.

In the instant case, the record does not reflect purposeful delay or bad faith in completing the hearing. No prejudice to Plaintiff caused by the delay appears in the record. Considering all the circumstances, the limited delay in completing the tenure hearing in this case was not unreasonable and is not unconstitutional per se. For the above reasons, Plaintiff's complaint will be DISMISSED at his costs.

New Orleans, Louisiana, this 16 day of July, 1986.

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UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

Filed  
July 16, 1986

EUGENE SHEDRICK	*	CIVIL ACTION
VERSUS	*	NO. 86-72
DOROTHY D. DONNELLY	*	SECTION "D" (1)

JUDGMENT

For reasons set forth in the court's Order dated July 16, 1986;

IT IS ORDERED that:

1. Plaintiff's Complaint seeking relief pursuant to 42 U.S.C. § 1983 is DISMISSED with prejudice at his costs.
2. Plaintiff's Complaint seeking relief pursuant to 42 U.S.C. § 2000(e)(2) is DISMISSED, at his costs, without prejudice, for lack of jurisdiction.

New Orleans, Louisiana, this 16 day of July, 1986.

/s/ illegible

UNITED STATES DISTRICT JUDGE

DATE OF ENTRY JULY 17, 1986



## APPENDIX B

## MINUTE ENTRY

McNAMARA, J.

August 13, 1986

Filed

August 15, 1986

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

EUGENE SHEDRICK	*	CIVIL ACTION
VERSUS	*	NO. 86-72
DOROTHY D. DONNELLY	*	SECTION "D" (1)

Before the court is the Motion of Plaintiff, Eugene Shedrick, for a New Trial. Plaintiff, Mover herein, alleges that he was entitled to have counsel present at his pre-termination hearing, and yet was denied the assistance of counsel during that proceeding. Plaintiff points out that the union contract rules between the Jefferson Federation of Teachers and the Jefferson Parish School Board prohibit the right to counsel at a pre-termination hearing. *See*, Article 14A of union contract rules, attached to Plaintiff's Motion for a New Trial.

It is Plaintiff's contention that the aforementioned union contract rule prohibiting the assistance of counsel at a pre-termination hearing and the denial of his request for assistance of counsel at such proceeding constitute a clear violation of constitutional due process.

In support, Plaintiff, Mover herein, relies on the Fifth Circuit cases of *Potashnick v. Port City Construction*

DATE OF ENTRY AUGUST 15, 1986

Co., 609 F.2d 1101 (5th Cir. 1980) and *Mosley v. St. Louis Southwestern Railway*, 634 F.2d 942 (5th Cir. 1981), where the circuit court acknowledged that "[t]he right to the advice and assistance of retained counsel in civil litigation is implicit in the concept of due process . . . ." *Mosley*, 634 F.2d at 945 (citing *Potashnick*, *supra*).

Defendants, Dorothy D. Donnelly, et al, have filed a memorandum in opposition. It is Defendants' position that in *Cleveland Board of Education v. Loudermill*, 105 S.Ct. 1487 (1985) [hereafter "Loudermill"], the Supreme Court clearly stated that in the context of a pre-termination hearing, the essential requirements of due process are notice to the employee and an opportunity to respond.

A hearing was held in the above captioned matter on Wednesday, August 13, 1986. After considering the memoranda and argument of counsel and the applicable law, the court finds that the Supreme Court's decision in *Loudermill* clearly sets forth all the due process requirements in the context of a pre-termination hearing. The court further finds that legal representation at a pre-termination hearing is not part of the process to which an employee is due process requirements at the pre-termination hearing, as set forth in *Loudermill*, *supra*. This court emphasizes that it is dealing solely with the issue of assistance of counsel at the pre-termination hearing, not the post-termination hearing. During the latter proceeding, Plaintiff was afforded the assistance of counsel.

Based on the above;

IT IS ORDERED that Plaintiff's Motion for a New Trial be and is hereby DENIED.

\* \* \* \*

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 86-3639

Summary

Calendar

EUGENE SHEDRICK,

Plaintiff-Appellant,

versus

DOROTHY D. DONNELLY, et al.,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Eastern District of Louisiana  
(D.C. No. CA-86-0072-D)

---

( January 27, 1987 )

Before GEE, JOLLY and HIGGINBOTHAM, Circuit  
Judges.

PER CURIAM:\*

Eugene Shederick, who was dismissed from his tenured position as a Louisiana public school teacher, appeals the district courts' dismissal of his 42 U.S.C. § 1983 action, dismissed on the basis that Mr. Shederick was afforded his rights to constitutional due process in all

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

hearings granted him, both pretermination and posttermination.

On appeal, Mr. Shedrick argues only one basis for reversal of the district court's dismissal of his claim: that he was denied the right of legal counsel at his pretermination hearing. The district court, in reviewing Mr. Shedrick's three-hour pretermination proceeding, held that the hearing was constitutionally adequate under *Cleveland Board of Education v. Loudermill*, 105 S.Ct. 1487 (1985). We agree.

The Supreme Court made very plain in *Loudermill* that a pretermination hearing can meet constitutional requirements even though it is simple and procedurally lean. In Mr. Justice White's words, such a hearing "need not be elaborate." *Id.* at 1495. The essential requirements of due process, the Court explained, are notice and an opportunity to respond. Mr. Shedrick was entitled at his pretermination hearing to nothing more than notice of the charges against him, an explanation of the evidence against him, and an opportunity to present his side of the story. These rights were fully accorded Mr. Shedrick, and he does not say otherwise. As clear as a cloudless sky it follows that Mr. Shedrick did not have a constitutional right to legal counsel at his preterminating hearing.

In his brief, Mr. Shedrick states two other issues, but does not, in the slightest, argue either of them. They are without merit. His posttermination hearings were not unconstitutionally untimely. Finally, the defendants in this case clearly had the authority under state law to suspend Mr. Shedrick without pay before granting him a pretermination hearing. *Jones v. Jefferson Parish School Board*,

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533 F. Supp. 816, 822 (E.D. La. 1982), (5th Cir. *aff'd* 688 F.2d 837 (5th Cir. 1982), *cert. denied*, 460 U.S. 1064 (1983).

The district court in this case correctly dismissed the complaint and is therefore

A F F I R M E D.